



**The Comptroller General  
of the United States**

Washington, D.C. 20548

## **Decision**

**Matter of:** J.W. Cook, Inc.--Request for Reconsideration

**File:** B-228038.2

**Date:** March 30, 1988

---

### **DIGEST**

Where party requesting reconsideration was placed on notice by the contracting agency of original protest proceedings at General Accounting Office (GAO) and had actual knowledge of issues raised, failure of the agency to provide that party with a copy of the original letter of protest is a minor procedural irregularity. Consequently, the party's argument that it was not afforded an opportunity to participate in the original protest is without merit and the party is not an interested party entitled to seek reconsideration.

---

### **DECISION**

J.W. Cook, Inc. requests that we reconsider our decision in C Construction Co., Inc., B-228038, Dec. 2, 1987, 67 Comp. Gen. \_\_\_, 87-2 CPD ¶ 534. In that decision, we sustained the protest by C Construction Company, Inc. against the award of a contract to Cook under invitation for bids (IFB) No. N62470-87-B-7107, issued by the Naval Facilities Engineering Command for the construction of a high school for military dependents at Camp LeJeune, North Carolina. Specifically, Cook did not acknowledge an amendment and its bid contained no indication of an extended bid opening date or of any other material terms of the amendment. However, Cook did submit its bid on the extended bid opening date. We held that where a material amendment to a solicitation, among other things, extends the bid opening date, the mere submission of a bid on the extended bid opening date, without more, was insufficient to show that the bidder was aware of and agreed to be bound by the additional terms of the amendment. That decision also expressly overruled certain of our previous decisions which stood for the proposition that the mere submission of a bid on an extended bid opening date could be sufficient to constitute constructive acknowledgment of a material amendment.

041733

In its request for reconsideration, Cook argues that it was not afforded an opportunity to participate in the original protest proceedings, that the terms of the amendment which it failed to acknowledge were not material and that the new rule which we stated in our previous decision should not be applied to this case. Cook also specifically requests award of its "out of pocket" costs incurred in connection with the preparation of its bid and the filing of its protest as well as its "lost opportunity" costs arising as a result of the firm ultimately not receiving award of the contract.

We dismiss the request for reconsideration.

In its request for reconsideration, Cook first argues that it was not afforded an opportunity to participate in the original protest proceedings. The record shows that by letter dated August 10, 1987, the Navy informed Cook "that a formal protest has been filed with the General Accounting Office by C Construction Company against [the] award of the referenced contract to your firm." The Navy also stated that it would forward a copy of the protest when received. Cook now states that, although it received this notice of the protest, it was never provided a copy of C Construction's letter of protest by the contracting agency as required under our Bid Protest Regulation, 4 C.F.R. § 21.3(a) (1987). Cook also argues that it was never apprised of the fact that it could submit its views to our Office during the pendency of the first protest.

Our Bid Protest Regulations permit an interested party who participated in the original protest to request reconsideration of a decision on that protest. 4 C.F.R. § 21.12(a) (1987). Moreover, we note that our decisions hold that, where a party has received notice of a protest, that party's failure to participate in the original proceedings precludes it from requesting reconsideration. See California Steve-dore and Ballast Co.--Request for Reconsideration, B-221335.2, May 30, 1986, 86-1 CPD ¶ 504; Jervis B. Webb Co.; Eaton Kenway, Inc.--Request for Reconsideration, B-218110.2, Feb. 11, 1985, 85-1 CPD ¶ 181. In this case, Cook does not assert that it did not receive the required notice but rather argues that the notice provided was not sufficient because it did not contain a copy of the letter of protest or apprise the firm that it could submit comments to our Office. We disagree.

The sole rationale for providing a copy of the protest to an interested party is to ensure that the party is apprised of the bases of the original protest. In this connection, we note that the record contains conclusive evidence that Cook was fully aware of the only basis of C Construction's protest during the pendency of the original proceedings.

Specifically, the record contains a copy of a letter from Cook dated August 24 (17 days after the initial filing of C Construction's protest), to Cook's Congressional representative, addressing with particularity the sole issue raised in C Construction's protest. Thus, we do not believe that Cook should now be afforded an opportunity to raise issues which it could have raised during the pendency of the original protest since our decisions clearly preclude a piecemeal presentation of evidence, information or analyses. Sovereign Electric Co.--Request for Reconsideration, B-214699.2, Feb. 12, 1985, 85-1 CPD ¶ 183.

We do not view the agency's failure to provide Cook with a copy of C Construction's letter of protest as a sufficient basis upon which to entertain Cook's reconsideration request for the following reasons. First, as noted above, Cook was fully aware of the sole ground of protest alleged by C Construction at the time of our original consideration of the protest. Second, a protester is generally required to diligently pursue information which would form the basis of its protest. Greishaber Manufacturing Co., Inc., B-222435, Apr. 4, 1986, 86-1 CPD ¶ 330. Because Cook was aware of the protest as well as the issue involved, we believe that the failure of that firm to contact either the contracting activity or our Office in an effort to obtain a copy of C Construction's letter of protest must be viewed as a failure on the part of Cook to diligently pursue information which it now alleges forms the basis of its complaint. Finally, our Bid Protest Regulations are published in the Federal Register and, thus, Cook may be charged with constructive notice that it had an opportunity to participate in the original protest proceedings. International Development Institute, 64 Comp. Gen. 259 (1985), 85-1 CPD ¶ 159. Simply, we do not believe that the failure of the agency to provide Cook with a copy of C Construction's letter of protest deprived Cook of the opportunity to participate in the original protest proceedings.

In short, our Bid Protest Regulations, 4 C.F.R. § 21.12(a), permits the protester and "any interested party who participated in the protest" to request reconsideration. This provision restricts those parties who are eligible to request reconsideration of a decision of this Office, in line with our belief that to the maximum extent possible our decisions should be final, thereby insuring the prompt resolution of protests and minimal disruption of the procurement process. See Tandem Computers, Inc.--Request for Reconsideration, B-221333.2, et al., 86-2 CPD ¶ 315.

For the above-stated reasons, we dismiss Cook's request for reconsideration. Accordingly, we need not consider Cook's claim for costs. See California Stevedore and Ballast Co.-- Request for Reconsideration, B-218110.2, supra.

The request for reconsideration is dismissed.

A handwritten signature in black ink, appearing to read 'R. M. Strong', written over the typed name.

Robert M. Strong  
Deputy Associate  
General Counsel